

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,

v.

ANGELA G POWELL,

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Civil Action No. 4:16-CV-137
(Judge Mazzant/Judge Johnson)

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On April 6, 2017, the report of the Magistrate Judge (Dkt. #46) was entered containing proposed findings of fact and recommendations that *pro se* Defendant's Amended Motion to Appoint Counsel (Dkt. #41) be denied. Having received the report of the Magistrate Judge (Dkt. # 46), having considered each of Defendant's timely filed objections (Dkt. #48), and having conducted a de novo review, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the Court hereby adopts the Magistrate Judge's report (Dkt. # 46) as the findings and conclusions of the Court.

BACKGROUND

On February 13, 2017, the Court entered a Memorandum Adopting Report and Recommendation of United States Magistrate Judge (Dkt. #30). On February 15, 2017, the Court amended the Memorandum Adopting finding that Plaintiff's Motion for Summary Judgment is granted (Dkt. #32). On that same day, the Court filed an Amended Final Judgment awarding Plaintiff judgment (Dkt. #33). Defendant filed a motion for the Court to appoint counsel on February 27, 2017 (Dkt. #35). The Magistrate Judge recommended Defendant's motion be denied,

and the Court adopted the Magistrate Judge's findings (Dkt. #45). Before the Court entered the Memorandum Adopting the Magistrate Judge's report, Defendant filed an Amended Motion for Appointment of Counsel with further support for her position.

ANALYSIS

The Magistrate Judge recommended Defendant's motion be denied because Defendant's case is not one that presents "exceptional circumstances" (Dkt. #46 at 1-2) (citing *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982)). Under 28 U.S.C. § 1915, the district court has broad discretion in appointing counsel in civil cases to litigants proceeding *in forma pauperis*. *Id.* at 1. Defendant is not proceeding *in forma pauperis*. *Id.* Regardless, the Magistrate Judge found Defendant's case was an action by the United States to collect on a student loan guaranteed by the United States, and there was no reason to believe that Defendant was unduly hindered in presenting her case without the assistance of counsel. *Id.* at 2.

Defendant first objects to the Court's findings in the Memorandum Adopting Report and Recommendation of United States Magistrate Judge granting Plaintiff's Motion for Summary Judgment (Dkt. #48 at 1-2). The Court has already addressed these arguments and will not revisit them. Defendant then objects that she unemployed and unable to afford counsel (*Id.* at 2-4); however, the inability to afford counsel is just one element that the Court analyzes in determining whether to appoint a litigant counsel. *Ulmer*, 691 F.2d at 213. Defendant finally argues that her case is not a "simple straight forward debt collection case" (Dkt. #48 at 4). However, this statement is not enough for the Court to appoint her counsel.

The Court notes again that Defendant's original motion to appoint counsel, and her amended motion, were both filed after the Court closed the case. Although the Court is sympathetic for Defendant's health issues, which Defendant describes as major depressive

disorder and anxiety (Dkt. #42), this is not an adequate basis for the Court to appoint counsel at this stage in the case.

CONCLUSION

Having received the report of the United States Magistrate Judge, having considered each of Defendant's timely filed objections (Dkt. #48), and having conducted a de novo review, this Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report (Dkt. #46) as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that Defendant's Amended Motion to Appoint Counsel (Dkt. #41) is **DENIED**.

IT IS SO ORDERED.

SIGNED this 26th day of May, 2017.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE